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EXAMINER
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PRESTON, JOHN O

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3691

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/735,558	<b>Applicant(s)</b> AGRAWAL, ASEEM	
	<b>Examiner</b> JOHN O. PRESTON	<b>Art Unit</b> 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,7,14,20,27 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,7,14,20,27 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. Claims 1, 7, 14, 20, 27, and 31 were presented for examination. Applicant filed an amendment on April 24, 2009. No claims were added. Claims 2-6, 8-13, 15-19, 21-26, 28-30, and 32-35 were canceled. Claims 1, 7, 14, 20, 27, and 31 were amended. After careful consideration of applicant's arguments/amendments, the examiner maintains the grounds of rejection for claims 1, 7, 14, 20, 27, and 31 under 35 USC 103(a).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1, 7, 20, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostroff (US 2002/0013782 A1) in view of Asplen (6,044,354), in view of Miller (US 2003/0216955), in view of Harshaw (US 2001/0010041 A1), and further in view of Stewart (US 2002/0152110 A1).

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Claim 1: In regard to the following limitation, Ostroff suggests:

- obtaining, from competitors' websites, competitors' data relating to competitors' products similar to said proposed new product: wherein said competitor's data comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; (See at least Ostroff: page 2, paragraphs 22-26.)
- processing, by said computer, said competitors' data wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying, by said computer, a shortlist of product attributes and positioning attributes based on the filtered competitors' data: (See at least Ostroff: page 3, paragraph 39)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- inputting, to a computer, merchant's data relating to a proposed new product: wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element merely would have

performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)
- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- outputting, by said computer, a ranking of said marketing mixes for said proposed new product to said merchant, said ranking of marketing mix mixes comprising any of a product configuration, a product position, and a price for said proposed new product. (See at least Miller: page 6, paragraph 63)
- analyzing, by said computer, said further competitor's data to identify marketing mixes for said proposed new product based on completed conjoint data analysis and ranking said marketing mixes according to further online marketing research; (Miller: pgh 45)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would

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have performed the same function as it did separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conducting, by said computer, conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

Claim 7: In regard to the following limitation, Ostroff suggests:

- periodically obtaining competitors' data, from competitors' websites, relating to said competitors' products that are similar to said one or more of said merchant's existing products, wherein said competitor's data

comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; detecting a change in the product and positioning attributes from said shortlist relating to at least one competitors' product that is similar to said one or more of said merchant's existing products; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63)

- processing, by said computer, said competitors' data wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying, by said computer, a shortlist of product attributes and positioning attributes based on the filtered competitors' data: (See at least Ostroff: page 3, paragraph 39)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- inputting, to a computer, merchant's data relating to one or more of a merchant's existing products wherein said merchant's data comprises product attributes and positioning attributes of each of said existing products, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and pricing; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

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- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)
- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- outputting, by said computer, a ranking of said one or more of said merchant's existing products that requires any of repositioning and repricing to said merchant. (See at least Miller: Figs. 3-9; pghs 48 and 63)
- analyzing, by said computer, said further competitor's data to identify said one or more of said merchant's existing products that requires any of repositioning and repricing based on the detected change, completing said conjoint data analysis, and ranking said one or more of said merchant's existing products according to further online marketing research; (Miller: pghs 10 and 37)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would



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have performed the same function as it did separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conducting, by said computer, conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

Claim 20: In regard to the following limitation, Ostroff suggests:

- periodically obtaining competitors' data, from competitors' websites, relating to said competitors' products that are similar to said one or more of said merchant's existing products, wherein said competitor's data

comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; detecting a change in the product and positioning attributes from said shortlist relating to at least one competitors' product that is similar to said one or more of said merchant's existing products; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63.)

- processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, (See at least Ostroff: page 3, paragraph 39.)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- inputting merchant's data relating to one or more of a merchant's existing products, wherein said merchant's data comprises product attributes and positioning attributes of each of said existing products, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and pricing; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)

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- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- outputting, by said computer, a ranking of said one or more of said merchant's existing products that requires any of repositioning and repricing to said merchant. (See at least Miller: Figs. 3-9; pghs 48 and 63)
- analyzing, by said computer, said further competitor's data to identify said one or more of said merchant's existing products that requires any of repositioning and repricing based on the detected change, completing said conjoint data analysis, and ranking said one or more of said merchant's existing products according to further online marketing research; (Miller: pghs 10 and 37)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

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- conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

Claim 31: In regard to the following limitation, Ostroff suggests:

- a processor configured to: periodically obtain competitors' data, from competitors' websites, relating to said competitors' products that are similar to said one or more of said merchant's existing products, wherein said competitor's data comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of

said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; detect a change in the product and positioning attributes from said shortlist relating to at least one competitors' product that is similar to said one or more of said merchant's existing products; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63)

- process said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identify a shortlist of product attributes and positioning attributes based on the filtered competitors' data, (See at least Ostroff: page 3, paragraph 39)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- a memory that stores an inputted merchant's data relating to one or more of a merchant's existing products, wherein said merchant's data comprises product attributes and positioning attributes of each of said existing products, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and pricing; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)

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- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- output a ranking of said one or more of said merchant's existing products that requires any of repositioning and repricing to said merchant. (See at least Miller: Figs. 3-9; pghs 48 and 63)
- analyze said further competitor's data to identify said one or more of said merchant's existing products that requires any of repositioning and repricing based on the detected change, completing said conjoint data analysis, and ranking said one or more of said merchant's existing products according to further online marketing research; (Miller: pghs 10 and 37)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conduct conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's

success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conduct online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

4. Claims 14 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostroff in view of Asplen, in view of Miller, in view of Harshaw, in view of Stewart, and further in view of Kotler & Armstrong (Prentice Hall).

Claim 14: In regard to the following limitation, Ostroff suggests:

- obtaining, from competitors' websites, competitors' data relating to competitors' products similar to said proposed new product, wherein said competitor's data comprises product attribute name-value pairs,

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positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63)

- processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, (See at least Ostroff: page 3, paragraph 39.)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- inputting merchant's data relating to a proposed new product, wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)



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- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- analyzing said further competitor's data to identify marketing mixes for said proposed new product based on completed conjoint data analysis and ranking said marketing mixes according to further online marketing research; (Miller: pgh 45)
- outputting a ranking of said marketing mixes for said proposed new product to said merchant, said ranking of marketing mix mixes comprising any of a product configuration, a product position, and a price for said proposed new product. (See at least Miller: page 6, paragraph 63)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's

success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw/Stewart does not teach the remaining limitation. However, Kotler & Armstrong suggests:

- said at least one marketing mix comprising any of a product configuration, a product position, and a price for said proposed new product. (Kotler & Armstrong: p. 49)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Kotler & Armstrong because the claimed invention is merely a combination of old elements, and in

the combination each element merely would have performed the same function as it did separately.

Claim 27: In regard to the following limitation, Ostroff suggests:

- a processor configured to: obtain, from competitors' websites, competitors' data relating to competitors' products similar to said proposed new product, wherein said competitor's data comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63)
- process said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identify a shortlist of product attributes and positioning attributes based on the filtered competitors' data, (See at least Ostroff: page 3, paragraph 39)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- a memory that stores an inputted merchant's data relating to a proposed new product, wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element merely would have

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performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)
- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- output a ranking of said marketing mixes for said proposed new product to said merchant, said ranking of marketing mix mixes comprising any of a product configuration, a product position, and a price for said proposed new product. (See at least Miller: page 6, paragraph 63)
- analyze said further competitor's data to identify marketing mixes for said proposed new product based on completed conjoint data analysis and ranking said marketing mixes according to further online marketing research; (Miller: pgh 45)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would

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have performed the same function as it did separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conduct conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conduct online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw/Stewart does not teach the remaining limitation. However, Kotler & Armstrong suggests:

- said at least one marketing mix comprising any of a product configuration, a product position, and a price for said proposed new product. (Kotler & Armstrong: p. 49)

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Kotler & Armstrong because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

***Response to Arguments***

1. Applicant's arguments filed 4/24/2009 have been fully considered but they are not persuasive. Applicant states that by the preliminary amendment, the claims are now allowable. The Examiner disagrees. Since Applicant did not argue the claims against the applied references, Applicant's argument amounts to a general allegation that the claims are allowable without pointing out why the claims are allowable over the prior art. The Examiner determined that Applicant's amendment did not overcome the references of record and therefore, maintained the rejection based on 35 USC 103. Since Applicant did not submit any arguments directed to the references of record, the rejection is maintained.

***Conclusion***

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **John Preston** whose telephone number is **571.270.3918**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **ALEXANDER KALINOWSKI** can be reached at **571.272.6771**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

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or faxed to **571-273-8300**

Hand delivered responses should be brought to:

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Examiner, Art Unit 3691  
July 18, 2009  
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